

Aug. 30, 1977

STATE OF NEW HAMPSHIRE

PUBLIC EMPLOYEE LABOR RELATIONS BOARD

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STATE EMPLOYEES' ASSOCIATION OF NEW
 HAMPSHIRE, INC., Richard E. Molan,
 Assistant Executive Director,
 Complainant

vs.

BOARD OF TRUSTEES, NEW HAMPSHIRE STATE
 PRISON, STATE OF NEW HAMPSHIRE,
 Respondent

* * * * *

Case No. S-0317-A

~~77-24~~
77-53

APPEARANCES

Representing the State Employees' Association of New Hampshire, Inc.: Robert Clark, Esq.

Representing the State of New Hampshire, Board of Trustees, State Prison: Andrew R. Grainger, Esq., Division of Legal Counsel, Attorney General's Office

FINDINGS ON REHEARING

Following a rehearing on the complaint of unfair labor practices filed by the State Employees' Association, said hearing held on August 11, 1977, testimony having been taken and the Board having received from counsel a Stipulation of Fact and Issue limiting the facts and the issue on which the parties wish a determination in the matter, the Board makes the following findings.

The Board accepts and adopts the Stipulation of Facts of the parties concerning the issue and states that its previous order dated June 30, 1977 was based on its interpretation of facts as presented by the parties. The Stipulation of the parties,

however, as to fact will be adopted in this case by the Board and by adopting said facts, the Board agrees that the issue presented by them in number 4 of the Stipulation is the sole issue to be determined. The Board commends the parties on their ability to stipulate and limit facts and encourages such action for the prompt resolution of issues presented to the Board.

The sole issue as agreed by the parties is whether a shift rotation plan adopted by the Board of Trustees of the New Hampshire State Prison on December 5, 1976, which plan changed the shifts of work of the employees, in the sense that the specific hours worked by employees were changed resulting in different combinations of hours and therefore different weekends in different work cycles, was a matter on which negotiation was required under the provisions of New Hampshire R.S.A. 273-A. The Board received testimony and proposed Findings of Fact and Rulings of Law submitted by the Board of Trustees of the State Prison as to the purpose for the shift change. It was the position of the State Employees' Association that regardless of the reasoning behind the shift changes, they are a mandatory subject of bargaining contemplated by the statute for discussion and negotiation as "wages, hours and other conditions of employment" as defined in R.S.A. 273-A:1 XI. While it appears to be the position of the S.E.A. that the shift change is not per se objectionable, they requested and were denied the right to negotiate prior to the institution of the change by the Prison Board of Trustees.

The purpose of negotiations under the statute is to allow

employers and employees to discuss, make suggested changes and consider the effect of proposed changes in certain areas. The statute specifically says that "terms and conditions of employment" means "wages, hours and other conditions of employment other than managerial policy within the exclusive prerogative of the public employer, or confided exclusively to the public employer by statute or regulations adopted pursuant to statute. The phrase 'managerial policy within the exclusive prerogative of the public employer' shall be construed to include but shall not be limited to the functions, programs and methods of the public employer, including the use of technology, the public employer's organizational structure, and the selection, direction and number of its personnel, so as to continue public control of governmental functions." Emphasis added.

The Board cannot agree with counsel for the Prison Board of Trustees that public control of a governmental function of running the Prison would be lost by negotiating the shift change. A shift change is clearly an action relating to the hours worked by employees and, therefore, relates to the conditions of their employment. While there may be managerial policies which relate to this shift change, the shift change in and of itself cannot, in the Board's opinion, constitute a managerial policy. Such policies would include the means of confining prisoners, programs of rehabilitation, and other activities undertaken by prison employees during their shifts, and would include training programs for prison employees and the like. The shift itself, however,

is not such a managerial policy.

The Board is constrained to point out the provisions of R.S.A. 273-A:3 I in the last sentence which states "the obligation to negotiate in good faith shall not compel either party to agree to a proposal or make a concession." In the event that the parties could not agree on the provisions of the shift change, and assuming that they had negotiated such provisions in good faith prior to the failure to agree, the statute would allow the Board of Trustees to institute a new policy. Without such bargaining in good faith prior to such institution, however, such unilateral action would be an unfair labor practice.

In light of the above, the Board finds that the answer to the question posed by the Stipulation of the parties is that the shift rotation plan constitutes a mandatory subject of negotiations under New Hampshire R.S.A. Chapter 273-A.

In light of the fact that the Board was in substantial doubt as to the facts which have been clarified by the Stipulation, and in light of the fact that the shift plan which is the question presented has been in effect for over six months time, the Board cannot require the Prison to reinstitute the prior system. The Board feels, however, that the effects of the shift rotation plan and its implementation are proper subjects for bargaining at this time, and therefore issues the following order:

ORDER: The Board orders the parties to negotiate over the effects of implementation of the shift rotation plan at the New Hampshire State Prison and by way of further order, to negotiate

prior to any further changes in shifts or shift rotations at the prison.

PUBLIC EMPLOYEE LABOR
RELATIONS BOARD

By: *Edward J. Haseltine*
Edward J. Haseltine, Chairman

DATE: *August 30, 1977*

All concurred, Board members Anderson and Moriarty present in addition to the Chairman.